

Before the
Federal Communications Commission
Washington, DC

In the Matter of:

Request for Review of Decision of)	
the Universal Service Fund Administrator by the)		
Virginia Department of Education)	
Richmond, Virginia)	
)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	
Re: Billed Entity Number:	126512	
471 Application Number:	226937	
Funding Request Number:	551018	
SLD Correspondence:	April 14, 2003	

In accordance with Title 47, Chapter 1, Part 54, Section 54.722(a) of the Code of Federal Regulations, The Virginia Department of Education (DOE) submits electronically this Petition for Review of an Administrator Decision to the Wireline Competition Bureau (WCB). In correspondence dated April 14, 2003 the Schools and Libraries Division (SLD) issued an Administrator's Decision on Appeal to DOE denying an appeal made by DOE of the above E-Rate funding request. The Department herewith provides to the WCB with persuasive arguments to overturn this decision, based on law, regulations, and policy in place at the time of application review and remaining in place to this day

Background

For E-Rate funding year Five (2001-2002), DOE submitted an E-Rate Form 471 within the designated filing window for discounts on a contract for telecommunications services provided by B & P The SpaceConnection on

behalf of Virginia public schools with students enrolled in DOE's distance learning program. The contract was signed after DOE posted a Form 470 on the SLD Web site for at least 28 days.

The single issue in question for this appeal is the proper determination of participating members of the "consortium" comprising schools participating in courses offered through the Virginia Satellite Educational Network. In the Denial, SLD contends DOE failed to provide letters of membership establishing their participation in the consortium. According to SLD policy in place at the time of application and remaining so today, DOE was not required to collect or provide letters of membership.

Discussion

The Virginia Electronic Classroom Program (ECP) was established by Virginia legislative mandate to provide distance learning classroom instruction statewide.¹ Advanced Placement and foreign language courses are provided to students across the commonwealth of Virginia via distance learning under the name "Virginia Satellite Educational Network." According to the legislation, courses must be made available statewide. This fact was articulated in the appeal to SLD.

As a program legislatively mandated to provide service statewide, the ECP was not technically required to collect letters of agency from Virginia eligible entities. Information on the SLD website "Reference" area under "Letters of Agency" indicates that a consortium which has a statutory basis for providing

¹ Code of Virginia Title 22.1 Section 22.1-212.2; Statewide Electronic Classroom Program

service may use such statute as proof of authorization.² This fact was cited in the initial DOE appeal to the SLD.³

Although the ECP statute requires that classes be made available statewide, it does not require participation by individual schools. Therefore, DOE used actual course enrollment forms to determine which schools participate in a given year. DOE feels this better reflects the intent of the E-Rate program by appropriately requesting discounts on behalf of schools that utilize K-12 services of the ECP rather than the entire state. Consequently, the requested discount rate was significantly below the statewide average of 61 percent.

Participation by individual schools was easily verified because DOE used enrollment forms as the basis for determining participation. Grades are kept for each student and each student is assigned to a particular school. Student grades are transferred to the school listed on the enrollment form. Schools must provide an adequate place for students to view classes, telephone, computer access, and fax access. For provisions of E-Rate, DOE waived all tuition for Virginia public school students.

Conclusion

The Department of Education is required by statute to provide K-12 courses to students throughout the commonwealth of Virginia. The ECP provides needed courses to small, remote and insular schools and is the epitome of the type of service E-Rate was designed to foster and support. Although not required by SLD policy, DOE made a good faith effort to request appropriate discounts on behalf of the schools that participate in ECP courses and provided adequate

² <http://www.sl.universalservice.org/referenc/letters.asp>

documentation to SLD for review. By enrolling students in classes and paying no tuition, schools knew they were participating in the ECP and by extension an SLD “consortium” for E-Rate discounts.

Based on these facts, DOE requests the WCB overturn this denial and remand this application to SLD for further processing. In the alternative and in accordance with CFR Title 47, Chapter 1, Part 1.3, DOE requests waiver of commission rules and SLD policy in the public interest.

Respectfully submitted this 29th day of May, 2003,

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³ August 30, 2002 DOE appeal to SLD at 2.